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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ALASDAIR TURNER, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California corporation,

Defendant.

No. 5:20-cv-7495

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Alasdair Turner (“Plaintiff”) files this Class Action Complaint against

1 Defendant Apple, Inc. (“Apple” or “Defendant”), on behalf of himself and all persons in the
2 United States who owned or leased an Apple iPhone with iOS 13 installed and who used a
3 limited cellular data plan with that iPhone, for Apple’s unlawful and unfair business practices.

4 2. To use their iPhones, consumers are required to use Apple’s mobile operating
5 system—designed and marketed by Apple—known as iOS. In September 2019, Apple released
6 iOS version 13, which Apple promised would bring “improvements across the entire system that
7 make your iPhone even faster and more delightful to use.”¹

8 3. Apple did not disclose that iOS 13 also contained hidden software code (the
9 “Consuming Code”) that caused devices running iOS 13 to consume cellular data without the
10 user’s input or control, and without providing the user any identifiable benefit.

11 4. As discussed in detail below, Apple designed iOS 13 in such a way that when
12 used in the ordinary course, iOS 13 caused the user’s iPhone to surreptitiously transmit cellular
13 data, increasing the user’s overall cellular data consumption without his or her knowledge,
14 without any change in the user’s usual behavior, and without providing the user any identifiable
15 benefit. By increasing cellular data usage, the Consuming Code increases costs to users and uses
16 up the cellular data they have purchased from their cellular providers.

17 5. For iPhone users who pay their cellular provider directly in proportion to the data
18 they use, or for iPhone users who pay for capped data plans (for example, 10 GB of data a
19 month), the Consuming Code causes consumers to be charged for cellular data they did not use,
20 or consumes data for which they otherwise would have been entitled to use under their data
21 plans.

22 6. Soon after Apple released iOS 13, iPhone owners started submitting complaints

23
24 ¹ <https://www.apple.com/ios/ios-13/>

1 and tech support queries related to the Consuming Code. They explained to Apple that their
2 phones were using copious amounts of data without explanation—yet Apple did nothing to fix
3 the problem for months. Finally, in June 2020, Apple released iOS version 13.6—the 14th
4 revision of iOS 13—which stopped the excess cellular data consumption.

5 7. Given Apple’s months-long delay in mitigating the harmful effects of iOS 13, the
6 only reasonable explanation is that the Consuming Code was not a defect. The Consuming Code
7 was designed to measure the performance of a new Apple software product or iOS feature,
8 unbeknownst to and without the input of users—and at their expense.

9 PARTIES

10 8. Plaintiff Alasdair Turner is a resident and citizen of the State of Washington.
11 Sometime in September or October 2019, Mr. Turner updated his iPhone to iOS 13. Before he
12 downloaded iOS 13, Mr. Turner did not know, nor could he have known through reasonable
13 diligence, of the Consuming Code.

14 9. Defendant Apple Inc. is a corporation incorporated under the laws of the State of
15 California. It keeps its principal place of business in Cupertino, California.

16 JURISDICTION AND VENUE

17 10. This Court has original jurisdiction over this action under the Class Action
18 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). This is a class action in which the amount in
19 controversy exceeds the sum of \$5,000,000, and Apple is a citizen of a State different from that
20 of at least one Class member.

21 11. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because
22 Apple’s principal place of business is located in this District and substantial parts of the events or
23 omissions giving rise to the claims occurred in the District.

24 CLASS ACTION COMPLAINT

INTRADISTRICT ASSIGNMENT

12. Under Local Rule 3-2(c) and (e) assignment of this action to the San Jose Division is proper because Defendant Apple, Inc. is headquartered in Santa Clara County, and a substantial part of the events or omissions which give rise to the claims alleged herein occurred there.

FACTS**A. Apple's iOS is an essential—and non-negotiable—component of using an iPhone.**

13. Since it was first released in 2007, the Apple iPhone has become a ubiquitous piece of technology. Apple sold approximately 185 million iPhones in 2019 alone.² By May 2020, over 52% of the smartphones used in the United States were iPhones, giving Apple a greater market share than all other phone manufacturers combined.³

14. Apple bundles the iPhone with its proprietary mobile operating system: iOS. iPhone owners are required to use iOS on their iPhones—they have no commercial options for operating their iPhones other than iOS. Over the last eight years (starting with iOS 6), Apple has announced a new iOS version each June and released it to the public each September, with periodic updates issued throughout the year.

15. One of the reasons that Apple updates iOS periodically is to add security improvements called “patches.” If users choose not to install the most recent iOS version, their iPhones may be vulnerable to outside attack. Apple itself encourages its users to download the latest iOS updates for this reason. For example, after Wikileaks published documents in 2017

² <https://www.usatoday.com/story/tech/2019/12/31/iphone-sales-dip-but-still-no-1-2019-airpods-and-watch-rise/2775193001/>

1 allegedly showing that the U.S. government was trying to exploit vulnerabilities in Apple's iOS
2 to hack into iPhones, an Apple spokesperson said:

3 Our products and software are designed to quickly get security updates
4 into the hands of our customers, with nearly 80 percent of users
5 running the latest version of our operating system. While our initial
6 analysis indicates that many of the issues leaked today were already
7 patched in the latest iOS, we will continue work to rapidly address any
8 identified vulnerabilities. We always urge customers to download the
9 latest iOS to make sure they have the most recent security updates.⁴

10 16. Given Apple's representations, users acted reasonably by accepting and installing
11 Apple's iOS updates.

12 **B. Consumers pay cellular providers, not Apple, for their cellular data.**

13 17. Though Apple is responsible for the hardware and operating system software on
14 its iPhones, it does not provide iPhone users with the data plans needed to use those iPhones.
15 That is, while Apple acknowledges that "[a] Wi-Fi or cellular data connection is required for
16 some features of the Apple Software and Services,"⁵ it does not provide that Wi-Fi or cellular
17 data connection itself. Instead, consumers must turn to cellular and data providers like AT&T,
18 T-Mobile, Verizon, and Sprint, among others.

19 18. Consumers pay those cellular providers directly, both for calling plans and for the
20 cellular data they need to access the internet without a Wi-Fi connection. Most providers offer
21 cellular data as part of a "plan": consumers pay monthly for a plan that entitles them to use a
22 particular amount of cellular data per month. Consumers who exceed their monthly cellular data
23 allotment are charged overage fees, which often are exorbitant.

24 ³ <https://www.statista.com/statistics/266572/market-share-held-by-smartphone-platforms-in-the-united-states/>

⁴ <https://techcrunch.com/2017/03/07/apple-says-most-vulnerabilities-in-wikileaks-docs-are-already-patched/>



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